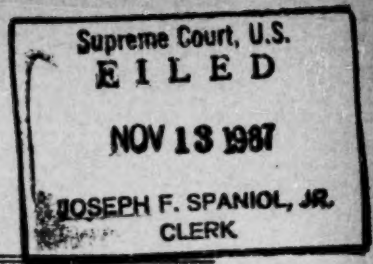


NO. 87-557



IN THE  
SUPREME COURT  
OF THE UNITED STATES

October Term, 1987

FRESNO POLICE OFFICERS ASSOCIATION, et al.,  
Petitioner

v.

STATE OF CALIFORNIA, et al., Respondents

RESPONSE TO PETITION FOR A WRIT OF  
CERTIORARI TO THE CALIFORNIA  
COURT OF APPEAL  
FIRST APPELLATE DISTRICT, DIVISION FIVE

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i.

### QUESTIONS PRESENTED

1. Can a public employee's contractual right to receive increased wages be the subject of an inverse condemnation action to invalidate legislation adopted by a State which restricts a public employer's right to pay increased wages from funds received by the employer, a local public entity, from the state?

2. Can employees who have received the benefit of, and who are bound by, a State court decision invalidating state legislation as creating an unconstitutional impairment of contract bring a subsequent inverse condemnation action based on the same legislation to recover interest lost because of the impairment created by the invalidated legislation?

**LIST OF PARTIES**

The Respondents before this Court are the State of California and the Controller for the State of California.

The Petitioners before this Court are The Fresno Police Officers Association, the Oakland Police Officers Association, the Organization of Deputy Sheriffs of San Mateo County, Bill Betzold of the Fresno Police Officers Association, Robert Foster of the Oakland Police Officers Association, and Frank Kastell of the San Mateo County Deputy Sheriffs Association.

# TABLE OF CONTENTS

	<u>PAGE</u>
QUESTIONS PRESENTED . . . . .	i
LIST OF PARTIES . . . . .	ii
OPINIONS BELOW . . . . .	2
JURISDICTION . . . . .	2
CONSTITUTIONAL PROVISIONS AND	
STATUTES INVOLVED . . . . .	2
STATEMENT OF CASE . . . . .	3
SUMMARY OF ARGUMENT . . . . .	4
REASONS FOR DENYING THE WRIT . . . . .	7
I. THIS IS AN INAPPROPRIATE CASE FOR REVIEW BY THIS COURT BOTH BECAUSE OF ITS PROCEDURAL STATUS AND ITS COMPLICATED FACTUAL BACKGROUND RELATED TO THE LEGAL ISSUE PRESENTED . . . . .	7
A. Under California Law The Action Sought To Be Reviewed Herein Is Barred By The Doctrine Of Collateral . . . . .	7
B. The Complicated Facutal Nature of This Case Would Not Lend Itself To A Decision Further Clairfying Inverse Condemnation Law . . . . .	10

II.	THIS ACTION IS NOT RIPE FOR CONSIDERATION OF ISSUES ATTEMPTED TO BE RAISED BY PETITIONER REGARDING WHETHER OR NOT A COMPENSABLE TAKING HAS OCCURRED . . . . .	15
III.	PETITIONERS HAVE CITED NO CASE IN POINT IN SUPPORT OF ARGUMENT THAT INVERSE CONDEMNATION HAS OCCURRED IN THE PRESENT CASE . . .	16
IV.	NO IMPORTANT ISSUES OF LAW INVOLVED . . . . .	18
	CONCLUSION . . . . .	20

v.

## TABLE OF AUTHORITIES

<u>Cases:</u>	<u>Page</u>
Agins v. City of Tiburon (1979) 24 Cal.3d 266	9,13
First English Envan. Luth. Ch. v. County of Los Angeles (1987) U.S. _____, 107 S.Ct. 2378 96 L.Ed. 2d 250	passim
HFH, Ltd. v. The Superior Court (1975) 15 Cal.3d 508	9
Lynch v. United States 292 U.S. 571, 54 S.Ct. 840 78 L.Ed. 1434	17
Risenberger v. Dairymen's Fertilizer Co-op Inc. (1968) 266 Cal.App.2d 269	8
Sonoma County Organization of Public Employees v. County of Sonoma (1979) 23 Cal.3d 96	passim
United States Trust Co. of N.Y. v. New Jersey (1977) 431 U.S. 1, 97 S.Ct. 1505 52 L.Ed. 92	17

CONSTITUTIONS AND STATUTES

	<u>Page</u>
Fifth and Fourteenth Admendments of the United States Constitution	2
United States Constitution Artilce I, Section 10	3
California Constitution Article I, Section 9	3
California Government Code Sections 16280, 16280.5, 16281 and 16282	passim

1.

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FIRST APPELLATE DISTRICT, DIVISION FIVE

---

Respondents State of California and  
Controller of the State of California  
makes this response to the Petition for  
Writ of Certiorari and pray that the  
petition be denied.



### **OPINIONS BELOW**

The opinions below are accurately stated in the Petition for Writ of Certiorari and appropriately appear in the appendix thereto.

### **JURISDICTION**

Respondents agree that the jurisdiction of this court is invoked under 28 U.S.C. section 1257(3).

### **CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED**

Respondents agree with Petitioner's statement of the Constitutional Provisions and Statutes Involved. The Fifth and Fourteenth Amendments of the United States Constitution are involved as are California Government Code sections 16280, 16280.5, 16281, and 16282. All of these sections appear in the appendix to the petition.

**STATEMENT OF THE CASE**

Following adoption of California Government Code section 16280, et seq. a group of public employees challenged the validity of those sections arguing that they impaired their contractual right to receive wages in violation of the impairment of contract clauses of the United States and California Constitutions. U.S. Const., art. I, Sec. 10; Cal. Const., art. I, Sec. 9. Sonoma County Organization of Public Employees v. County of Sonoma (1979) 23 Cal.3d 96. The challenged Government Code sections were held to be violative of both the federal and state constitutions. Id. Although requested to do so, the California Supreme Court refused to award Petitioner's interest lost wages withheld. Id. at 321.

Following the decision in Sonoma, the present action in inverse condemnation was filed seeking to recover the interest

denied in Sonoma.

Following the trial court's denial of all relief to Petitioners, an appeal to the California Court of Appeal was perfected. The opinion affirming the trial court decision appears at 190 Cal.App.3d 413.

#### SUMMARY OF ARGUMENT

The present case involves not just the case itself, but the disposition of the constitutional challenges to California Government Code section 6820, et seq. by the California judicial system. In Sonoma County Organization of Public Employees v. County of Sonoma, supra, 23 Cal.3d 296, the California Supreme Court disposed of challenges to the constitutional validity of those sections by holding them invalid as violative of the impairment of contract clauses contained in the Federal and State Constitutions. That decision has now become final and both respondents and

petitioners are bound by it.

The present action seeks no declaration that the challenged statutes are invalid but rather seeks only an independent cause of action for damages based on an alleged inverse condemnation which relies on the declaration of invalidity contained in Sonoma.

Respondents first argue that regardless of the underlying merits of Petitioners arguments, this in an inappropriate case for the exercise of this court's jurisdiction because of the unusual and complicated factual and legal background out of which is arises. Specifically Respondents will argue that the second and third questions posed by Petitioners are both premature in that no California court has had an opportunity to rule on these questions.

Respondents will also argue that the issue of whether legislation which

restricts an employee's right to receive wages from a public entity is subject to attack under the Impairment of Contract Clause or under the Taking Clause of the Fifth Amendment is not an important issue deserving this Court's attention. No conflicts exist between any court because, as far as Respondents have been able to discover, this issue has not been ruled on by any other court. Further given the unusual circumstances out of which this case arises, it is unlikely that it will be raised again in the future.

Next Respondents will argue that an action in inverse condemnation will not lie to challenge the constitutional validity of legislation which impairs a contractual right to receive an increase in wages of public employees.

**REASONS FOR DENYING WRIT**

I. THIS IS AN INAPPROPRIATE CASE FOR REVIEW BY THIS COURT BOTH BECAUSE OF ITS PROCEDURAL STATUS AND ITS COMPLICATED FACTUAL BACKGROUND RELATED TO THE LEGAL ISSUE PRESENTED.

A. Under California Law The Action Sought To Be Reviewed Herein Is barred By The Doctrine Of Collateral Estoppel.

As the Statement of the Case contained in the Petition for a Writ of Certiorari (hereinafter Petition) shows in the case of Sonoma County Organization of Public Employees v. County of Sonoma supra, 23 Cal.3d 296, the California Government sections here at issue, Sections 16280 and 16280.5, were held to be invalid in that they impaired

contractual rights in violation of both the California and the United States Constitutions. Petition 6,7. The issue of the employees' right to interest on the unpaid wages was presented in that case. The California Supreme Court held that as a matter of California law, interest was not available. Petition 7. No review of that decision was sought in this court. That decision having become final, petitioners in the present case are bound by it even though they were not parties to Sonoma.

As held in Risenberger v. Dairymen's Fertilizer Co-op Inc. (1968) 266 Cal.App.2d 269 at 278:

If it appears that a particular party, although not before the court in person, is so far represented by other that his interest received actual and efficient protection, the decree will be held to be binding upon him. [citation] . . . 'The rule should not be defeated by minor differences of form, parties, or allegations, when these are contrived only to obscure the real purpose-- a second trial on the same cause

between the same parties . . . ." Hockman v. Mortgage Finance Corp. 289 Pa. 260 [137 A.252,253] [citation].

The California Court of Appeal did not reach this collateral estoppel issue in the present case because the matter was decided solely on the basis of the California Supreme Court's decisions in HFH, Ltd. v. The Superior Court (1975) 15 Cal.3d 508 and Agins v. City of Tiburon (1979) 24 Cal.3d 266.

The Sonoma decision has now been final for eight years. The present action thus is not truly an attempt to recover under a theory inverse condemnation but rather is an attempt to breathe new life into a long dead cause of action. What petitioners in fact seek is "a second trial on the same cause between the same parties . . . ." Id. The invalidation of Government Code sections 16280 and 16280.5 inured to the benefit of all public employees including petitioners herein.



They should not now be allowed to burden this Court's crowded calendar by urging a new legal theory on the same set of facts for the sole purpose of circumventing a decision of the State's highest court which has now been final for years.

B. The Complicated Factual Nature Of This Case Would Not Lend Itself To a Decision Further Clarifying Inverse Condemnation Law.

In Sonoma County Organization Of Public Employees v. County of Sonoma, supra, 23 Cal.3rd 296 the California Supreme Court described the effect of Government Code section 16280 as follows:

On June 6, 1978, an initiative measure was passed by the electorate adding article XIII A to the California Constitution. The provision, designated on the ballot as Proposition 13, placed significant limitations upon the taxing power of local and state government; the amount of revenue which local entities could raise by means of

property taxes was sharply reduced. In order to mitigate the effects of this reduction, the Legislature determined to distribute surplus funds which had been accumulated in the state treasury to local agencies.

By enactment of section 16280 of the Government Code, the Legislature prohibited the distribution of state surplus or loan funds to any local public agency granting to its employees a cost-of-living wage or salary increase for the 1978-1979 fiscal year which exceeded the cost-of-living increase provided for state employees. In addition, the section declares null and void any agreement by a local agency to pay a cost-of-living increase in excess of that granted to state employees.

Id. at 302. Footnotes omitted.

As a result salary increases were withheld from the employees by the local entities. Petition 6.

In traditional inverse condemnation actions, including that in First English Envan. Luth. Ch. v. County of Los Angeles (1987) \_\_\_\_ U.S. \_\_\_\_, 107 S.Ct. 2378, 96 L.Ed. 2d 250, the inverse condemnation is worked by the action of legislation which restrict the use of

privately owned real property. But in the present case, Government Code section 16280 (which is set forth at Petition 15a) the restriction created by the state legislation is imposed, in part, on other public entities, the local entities receiving funds from the state. While that legislation has now been declared violative of the impairment of contract clauses of both the California and Federal Constitutions, no court has held that such invalidation of legislation can constitute inverse condemnation of a contractual right to receive money.

Certainly the factual situation presented in the instant case is so removed from that of First English that a granting of a Petition for Writ of Certiorari based on the decision in First English is wholly unwarranted. First English dealt with a simple and clear case inverse condemnation with the thrust of a

decision being directed toward the issue of whether or not interim damages were to be available to plaintiffs for the period of time between the enactment of invalid legislation and the declaration of its invalidity. First English establishes no new law regarding the elements which caused creation of the inverse condemnation or as to what kinds of property inverse condemnation can be applied. Thus, even though First English does narrow the scope of Agins v. City of Tiburon, supra, 24 Cal.3d 266, a case upon which the Court of Appeal in the present case relied heavily, First English does nothing to establish new law regarding the elements of inverse condemnation.

Respondents' research has revealed no case similar to the present case where it is argued that the placing of restrictions on funds transferred from a State to local entities can serve as the

basis of an inverse condemnation action. In fact respondents are unfamiliar with any other, and petitioners have cited no other, circumstances similar to the present case whether or not they lead to inverse condemnation actions.

This case involves not an important principle of law but rather only one of those little oddities that are, on rare occasions, created by situations such as the enactment of Proposition 13 in California which suddenly, and unexpectedly, placed financial burden on local entities. Sonoma County Organization of Public Employees v. County of Sonoma, supra, 23 Cal.3d 296. Given this factual background which, if not unique, is certainly very unusual, the present case is an inappropriate vehicle for yet another contemporary consideration of inverse condemnation law by this court.

II. THIS ACTION IS NOT RIPE FOR  
CONSIDERATION OF ISSUES ATTEMPTED TO  
BE RAISED BY PETITIONERS REGARDING  
WHETHER OR NOT A COMPENSABLE TAKING  
HAS OCCURRED.

The second and third Questions Presented in the Petition both pose premature questions.

No California Court has yet ruled on the issue of whether or not the taking of contractual rights to receive wage increases constitutes a compensable taking within the meaning of the Fifth Amendment. Since no California court has ruled on the existence of a cause of action in inverse condemnation, it is manifest that no California court has ruled on this measure of damages in such an action. Accordingly, it would be premature for this Court to grant Certiorari in relation to the second and

third Questions Presented by petitioners.

III. PETITIONERS HAVE CITED NO CASE IN  
POINT IN SUPPORT OF ARGUMENT THAT  
INVERSE CONDEMNATION HAS OCCURRED IN  
THE PRESENT CASE.

Before this Court should reach the interim damages issue raised in First English, petitioners should be required to make a substantial showing that they had a property right which can properly be subjected to inverse condemnation. None of the cases relied upon by petitioners supports their argument that their contractual right to receive increased wages could be the subject of an inverse condemnation action. Critically, the two principle cases upon which they rely (United States Trust Co. of N.Y. v. New Jersey (1977) 431 U.S.1, 97 S.Ct. 1505, 52 L.Ed.2d 92 and Lynch v. United States

292 U.S. 571, 54 S.Ct. 840, 78 L.Ed. 1434) are not inverse condemnation cases. Respondents accept, as they must in light of Sonoma, that Government Code sections 16280 and 16280.5 did constitute an impairment of contract. But rather than supporting petitioners' position that an inverse condemnation has occurred in the present case, Sonoma, United States Trust Co., and Lynch all support the proposition that when legislation interferes with contractual rights, the remedy is found in the impairment of contract clauses rather than in inverse condemnation.

As stated by the California Court of Appeal, "However, appellants have cited no authority for the proposition that legislation enacted in violation of the state and federal constitutional prohibitions against impairment of contractual obligations give rise to an



action for inverse condemnation." Slip opinion, Petition 11a.

If the measure of damages to be awarded for impairment of contracts is to include interest on the lost use of money, then the proper remedy for employees denied their wage raises was to seek review from this court in the Sonoma case. Not having done so, they must not be allowed to correct that failing by incorrectly converting an impairment of contract case into an inverse condemnation action.

#### IV. NO IMPORTANT ISSUES OF LAW INVOLVED.

While plaintiff's attempt to utilize an inverse condemnation action does present an interesting question of law, it hardly satisfies the requirements of being the type of important question of law upon which this court should expend

its limited resources. To respondent's knowledge there certainly is no conflict between courts, either federal or state, on this issue since respondents are unaware of any other cases dealing with this issue. Nor have respondent's cited any other cases dealing with this issue. This certainly is not a widespread social issue which is the subject of legislation, comments in law reviews or even newspaper editorials. In point of fact this case involves nothing more than an attempt, by convoluted reasoning, to twist an inapplicable concept of law to fit into a tortured factual pattern so as to avoid the effect of a final judgment in another case which is binding on these petitioners. This court has recently resolved the important issue of the availability of interim damages in a properly brought inverse condemnation action. Neither the facts at issue nor

the manner in which this case was resolved add any luster to petitioner's claim of importance in the present case. The present case grew out of a very unusual factual and legal situation which is highly unlikely to be repeated.

### CONCLUSION

For all of the reasons set forth above, the petition for writ of certiorari should be denied.

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